

Joshua Zahn

October 18, 2011

1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS,
Plaintiff,

vs.

UNITED STATES OF AMERICA AND
ERIC H. HOLDER, JR., IN HIS
OFFICIAL CAPACITY AS ATTORNEY
GENERAL OF THE UNITED STATES,
Defendants, and

WENDY DAVIS et al.,
Defendant-Intervenors.

CIVIL CASE NO.
1:11-CV-1303
(RMC-TBG-BAH)

ORAL DEPOSITION OF
THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE
ATTORNEY GENERAL OF TEXAS (JOSHUA ZAHN)

October 18, 2011

ORAL DEPOSITION OF THE DESIGNATED REPRESENTATIVE OF
THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS (JOSHUA ZAHN),
produced as a witness at the instance of the Defendants
and duly sworn, was taken in the above-styled and numbered
cause on the 18th day of October, 2011, from 11:08 a.m. to
11:54 a.m. and 12:57 p.m. to 3:45 p.m., before Kathleen
Nevils, Certified Shorthand Reporter in and for the State
of Texas, reported by computerized stenotype machine at
the offices of the Attorney General of Texas, Price
Daniels Building, 209 West 14th St., Austin, Texas,



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquireolutions.com

Joshua Zahn

October 18, 2011

2

pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

FOR PLAINTIFF:

David J. Schenck
and
Bruce D. Cohen
Special Assistants to the Attorney General of Texas
Price Daniels Building, 209 West 14th St.
Austin, TX 78701
E-mail: david.schenck@oag.state.tx.us

FOR DEFENDANTS:

Bryan L. Sells
and
Daniel J. Freeman
U. S. Department of Justice, Civil Rights Division
Special Litigation Counsel, Voting Section
950 Pennsylvania Avenue, NW NWB Room 7264
Washington, DC 20530
Telephone: 202.353.0792
E-mail: bryan.sells@usdoj.gov

FOR DEFENDANT-INTERVENOR GONZALEZ:

Max Renea Hicks
101 West 6th St.
Suite 504
Austin, TX 78701
Telephone: 512.480.8231
E-mail: rhicks@renea-hicks.com

ALSO PRESENT:

Todd Giberson
David Falk



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

3

INDEX

Appearances.....2

THE DESIGNATED REPRESENTATIVE OF THE OFFICE OF THE
ATTORNEY GENERAL OF TEXAS (JOSHUA ZAHN)

Examination by Mr. Sells.....5

Further Examination by Mr. Schenck.....87

Signature and Changes89

Reporter's Certificate.....91



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

4

GOVERNMENT EXHIBITS

NO.	DESCRIPTION	PAGE MARKED	PAGE REFERRED
2	Hispanic Population Profile		
3	VTD Citizen Voting Age Population by Race and Ethnicity		
4	Hispanic Population Profile for PlanH283		
5	Hispanic Population Profile for PlanC100		
6	Hispanic Population Profile for C185		
7	Racially Polarized Voting Analysis		



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

15

1 before the middle of June?

2 A. Recently.

3 Q. Okay. Aside from those three things that you've
4 just mentioned, providing data to experts, doing some
5 additional analysis and preparing these reports, did you
6 have any other role in the redistricting process?

7 A. As far as I know, that's the three things.

8 Q. Okay. Were you at all involved in redistricting
9 earlier in the decade, either in 2001 or 2003?

10 A. Yes.

11 Q. And did you do the same things for those
12 redistricting processes or were your responsibilities
13 different?

14 A. I produced report, and I cannot remember whether
15 we provided data to our expert or not. I cannot remember.
16 Probably not.

17 Q. Does the Legal Technical Support Division have
18 any other role other than you -- I'm talking now about
19 your whole division -- have any role in the redistricting
20 process beyond those three things that you mentioned to
21 me?

22 A. As far as I know, no.

23 Q. Did you talk with the division chief about that
24 in preparation for this deposition?

25 A. Yes.



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

16

1 Q. You asked him what else we do in the
2 redistricting process?

3 A. No.

4 Q. So there might be something else that the
5 division does that you're not aware of?

6 A. Yes.

7 Q. Okay. I want to go back to the statistical
8 reports that you produce and that you call the standard
9 reports. Can you tell me what reports those are?

10 A. I try my best. I did not bring all things. I
11 just wrote down this so -- first one is -- we call it M-3
12 report. M-3 report is the population, VAP and all this
13 percentage across all these districts, and incumbent
14 report. So for each district, we list this incumbent, and
15 if there was a new district, then we still put the
16 incumbent in so we have -- maybe this district is no
17 incumbent; there's no incumbent for this district. Maybe
18 for some district we have two incumbents. So all this
19 come in, and also carry population and VAP information.

20 And then we have compare by row. These
21 names are -- I don't know when we got these names for
22 these reports, but compare by row is we put a few plans
23 together so we compare row by row, so we have benchmark
24 plan. And then we have new plan and we also have other
25 plans. We put them together, so one district we compare



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

17

1 -- I'm sorry. Something wrong with my throat.

2 Q. Sure.

3 A. Compare by row is we have a few rows -- a few
4 plans and then we put them together side by side so we
5 have population, VAP, all this, and then we'll compare
6 what's the change for each district. The other one is new
7 and -- new-old.

8 THE REPORTER: I'm sorry. New?

9 THE WITNESS: New-old. And another one is
10 old and new. Actually, this is the new plan and then the
11 old plan. The old plan is always benchmark plan, and the
12 new plan, any plan, we will call it the new. And then we
13 compare by district, so if there's a split or any kind of
14 things -- right? -- we -- we -- we look at this percentage
15 or what's the change.

16 And the reasons we have new and old --
17 right? -- is actually they are the same; the data are the
18 same; just presenting different presentation. So we --
19 when we have new-old, we sought by old-new plans and then
20 we can compare, okay, here's District 1, this is County 1,
21 County 2, County 3 and then what happened to old plan, and
22 we -- when we have old and new, then we sort by old, so
23 for old plan -- right? -- we have District 1, which
24 county, which county, which county, X county, Y county, X
25 county, and then here is the new. So this called a



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquireolutions.com

Joshua Zahn

October 18, 2011

18

1 new-old and the old-new, so just for these people to look
2 at this and then they compare what's the change.

3 And then the other one is retrogression.
4 Retrogression is the same thing, close to this, but we
5 look at a few plans, and then we have set up benchmark
6 plan and all this plans and count the district numbers and
7 how many districts are above 20 percent Black VAP and
8 Black population or all this kind of thing. So we have 20
9 percent, 30 percent, 40 percent, we count all numbers.

10 And then the next -- second part is the
11 detailed information for this district. If we say 20
12 percent, 30 percent, we have two districts. Here's two.
13 Then for the next part, we list the number of districts,
14 so maybe District 1, District 3, these are above 20
15 percent, so that people to look at quickly and then find
16 out how many plans -- how many districts are above some
17 selection. And then we have split-city -- split-city
18 plan. Sorry.

19 MR. SCHENCK: Take your time.

20 THE WITNESS: Maybe --

21 MR. COHEN: Dr. Zahn, take your jacket --

22 MR. SCHENCK: Take your tie off.

23 MR. COHEN: Take your jacket and your tie

24 --

25 MR. SELLS: Absolutely make yourself



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

19

1 comfortable.

2 THE WITNESS: I have not -- I have this
3 problem.

4 MR. COHEN: Take -- why don't you take your
5 coat off, see if you're more comfortable, and if you want
6 to undo your tie, you won't offend anybody here. Okay?

7 THE WITNESS: Yeah, okay. Maybe I got cold
8 yesterday from the cold front come down. Split city is we
9 look at the cities that was split and then we have the
10 total population of the split -- of the city, and then the
11 different part of the city and the population and that
12 percentage, so we know that -- or we look at this city,
13 especially the large cities, and these cities are split,
14 so that's -- that's in the analysis.

15 MR. SELLS: Uh-huh.

16 THE WITNESS: And then we have DEA. We
17 call it DEA, District Election Analysis. So for this
18 report, we put all the election results in this district.
19 We have selection. Sometimes we select '08 and a zero --
20 '08 and '10. Generally we are more interested in '08 and
21 '10 to '10. And this time, I think we select just because
22 there's too many elections and too many rows, so we try to
23 reduce the report. Sometimes it's hundreds of pages, so
24 we reduce to -- we limit to 2010.

25 And then for 2010, every elections results



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

20

1 are included in this district, so we can look at what's
2 the results for this district. It's called DEA report.

3 And finally, the most -- most difficult
4 thing for the report is we call it the RPVA, Racial
5 Polarization Voting Analysis. This is the report most
6 complicated. We use regression to predict what result,
7 and then we compare the actual results of the election.
8 So we have predicted how Black voters will vote for this
9 candidate and how Hispanic voters will vote for this
10 candidate and then how Anglo and others vote for this
11 candidate.

12 And then we have another column to say the
13 actual voting results for this district, and then another
14 column for state, for statewide, what's the voting pattern
15 for this kind of thing. So this is more complicated and
16 more useful, that people use a lot.

17 Q. (By MR. SELLS) Are there any other reports you
18 can think of?

19 A. No, but these are major reports.

20 Q. And you produce all of these reports or do you
21 produce only some of them and your colleagues produce some
22 of them?

23 A. I don't -- what do you mean by "produce"? I'm
24 sorry, I --

25 MR. SCHENCK: It's okay. Are you the one



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquireolutions.com

Joshua Zahn

October 18, 2011

21

1 -- if you don't mind, are you the one actually generating
2 all of these reports or is there someone else in LTS that
3 does that with you or for --

4 THE WITNESS: Actually, other people can
5 produce this because the programs are there; data are
6 there. You just -- you just change the parameter and then
7 the hit button and it will run. The report will be
8 generated.

9 MR. SELLS: Okay.

10 MR. COHEN: I think --

11 MR. SCHENCK: I see. The software --

12 MR. COHEN: Someone has to do the -- the
13 programming.

14 MR. SCHENCK: I think his question was:
15 Are you the one responsible for generating the report if
16 someone asks the question of "We need" --

17 MR. COHEN: RPVA.

18 MR. SCHENCK: RPVA report. Will you be the
19 person who would hit the button and make the report come?

20 THE WITNESS: Yes, I -- yes, but also
21 sometimes I was too busy, and then my colleague could
22 generate the report.

23 MR. SELLS: Okay.

24 THE WITNESS: It's very user friendly. You
25 just put in the --



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

22

1 MR. COHEN: The term is relative, Dr. Zahn.

2 Q. (By MR. SELLS) So did you -- are you the person
3 responsible for programming these reports?

4 A. Yes.

5 Q. Okay. All of them?

6 A. Uh-huh.

7 Q. So you're the one who created this user-friendly
8 interface that any one of your colleagues can go in and
9 print out whatever reports they want?

10 A. Yes.

11 Q. But normally they would come to you to print
12 them out?

13 A. They don't need to. The -- all these programs
14 are in the network, so if I was at home and absent, then
15 my colleague just open the computer and then find the
16 program and change the parameter and hit button.

17 Q. Okay. As a matter of internal processes,
18 however, if a request came in from the Legislature, "I
19 want some reports," would that get passed to you or to one
20 of your colleagues or you just don't know?

21 A. As technical person, I do not have connection
22 with the people outside our division, so every time the
23 new plans are out, I got notice that, "Hey, here's new
24 plan," so I just ran or my colleague will run this reports
25 and put in somewhere. That's it.



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

48

1 working correctly.

2 Q. Okay. I'm going to hand you what I will mark as
3 Government Exhibit 7.

4 (Government Exhibit No. 7 marked).

5 Q. (By MR. SELLS) Would you take a look at that
6 document and tell me if you recognize it?

7 A. Yes.

8 Q. What is it?

9 A. We call it RPVA. Actually, it's Racially
10 Polarized Working Analysis.

11 Q. Who produced this report?

12 A. The same question that like last time. This
13 report could be produced by anyone in our division, so
14 once we plug in the parameters and hit a button, it will
15 generate this report. So I wrote this program, SAS
16 program, to produce this report.

17 Q. And this looks like the output of your SAS
18 program, right?

19 A. Yes. This only part of it. It's very thick to
20 print all --

21 Q. Right, and in fact, this is only the part that
22 relates to a single district, District 41, right?

23 A. Uh-huh, yes.

24 Q. And the full report would contain a report on
25 all of the districts in a particular plan, right?



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

49

1 A. Yes.

2 Q. So I'll represent to you that for the purpose of
3 saving trees and whatnot, I didn't print out the whole
4 report, so this is an excerpt from that report, which I
5 think you established.

6 Does it look to be the full excerpt for
7 District 41? In other words, I want you to look through
8 the pages I have excerpted to make sure that it's got
9 everything for District 41 in PlanH283.

10 A. Yeah, I was cutting tables, and that's right, we
11 have eight tables, T 1 through T 8 --

12 Q. Okay.

13 A. -- in this one.

14 Q. And this report is part of your standard
15 reporting package or standard reports, right?

16 A. Yes.

17 Q. What data did you use to produce this report?

18 A. The data from TLC on population and votes and
19 all -- all the different tables. I cannot -- I cannot
20 name all -- remember all these tables. For example,
21 office table, candidate table, all these kind of things,
22 right. And then also a data for plan we downloaded from
23 TLC.

24 Q. Does it use census data as well?

25 A. Yes.



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com

Joshua Zahn

October 18, 2011

50

1 Q. What census data does it use?

2 A. 2010 census data. It's transferred from TLC to
3 us.

4 Q. So if I'm hearing you correctly, it uses
5 essentially the same data that you talked about before,
6 the plan data from RED Appl or TLC?

7 A. Yes.

8 Q. Census data from the TLC and election data from
9 the TLC?

10 A. Yes.

11 Q. Does this report rely on any other data beyond
12 those?

13 A. No.

14 Q. Does this report rely on the CVAP data that we
15 just talked about, either the TLC's or the Office of the
16 Attorney General's CVAP data?

17 A. No.

18 Q. Why not?

19 A. This report is rely -- is based on the VAP data.
20 This report was produced in 1990s and then year 2000
21 cycle.

22 THE REPORTER: I'm sorry. What cycle?

23 THE WITNESS: Year 2000 redistricting
24 cycle, so this -- this is the -- a little format we just
25 produce. We keep producing.



ESQUIRE
an Alexander Gallo Company

Toll Free: 800.880.2546
Facsimile: 512.328.8139

Suite 220
3101 Bee Caves Road
Austin, TX 78746
www.esquiresolutions.com